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OFFICE OF PETITIONS

In re Patent No. 6,965,026
Michael J. Zaworotko et al.
Issue Date: November 15, 2005
Application No. 10/083,781
Filed: February 25, 2002
Atty Docket No. USF-104XC1

: LETTER REGARDING
: PATENT TERM ADJUSTMENT
: AND
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION
:

This is in response to the "COMMUNICATION IN REPLY TO LETTER REGARDING PATENT TERM ADJUSTMENT", filed June 14, 2006, pursuant to patentees' duty of candor and good faith to the Office. Patentee states that the 342 days of patent term adjustment as indicated on the above-identified Patent is incorrect.

The request for reconsideration of the patent term adjustment indicated on the patent is **GRANTED**.

On November 15, 2005, the application matured into U.S. Patent No. 6,965,026, with a revised patent term adjustment of 342 days. A communication filed November 9, 2005, prior to the issuance of the patent and on the belief that the patent would be issued with an incorrect number of PTA days, was dismissed in a decision mailed May 30, 2006 because no basis for entitlement to PTA days other than 342 days had been provided.

Patentee states that the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) of 342 days shown in the PAIR system was incorrect. Patentee's arguments are well taken.

A review of the application history confirms that the patent term adjustment of 342 days indicated in the PAIR database and on the patent is in error. After the initial determination of 292 days Patent Term Adjustment under 35 U.S.C. 154(b), 50 days were accorded for PTO delay in issuing the Patent on November 15, 2005, more than four months from the payment of the issue fee on May 26, 2005. Patentees assert that a "Petition for Color Drawings" was filed on April 1, 2005, after the mailing of the notice of allowance.

37 CFR § 1.704(c)(10) provides that:

Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper;

or

(ii) Four months;

Accordingly, pursuant to § 1.704(c)(10), the patent term adjustment should have been reduced by the number of days beginning on the date the "Petition for Color Drawings" was filed, April 4, 2005, and ending on the date of issuance of the patent, November 15, 2005. As this period exceeds four months, the patent term adjustment should have been reduced by the lesser period of 120 days.

In view thereof, the correct determination of PTA is two hundred twenty two (222) days.

As this letter was submitted as an advisement to the Office of an error in Patentee's favor, the Office will not assess the \$200.00 application fee under 37 CFR 1.705(b). The Office thanks Patentees for their good faith and candor in bringing this to the attention of the Office.

The patent file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. See 35 U.S.C. § 254 and 37 CFR § 1.322. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by two hundred twenty two (222) days.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Patricia Faison Ball at (571) 272-3212.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 6,965,026 B2

DATED : November 15, 2005

INVENTOR(S) : Zaworotko et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (342) days

Delete the phrase "by 342 days" and insert – by 222 days--